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Co-Lead/Liaison Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

**IN RE: BARD IVC FILTERS
PRODUCTS LIABILITY LITIGATION**

MD No. 02641

**PLAINTIFFS' UNOPPOSED MOTION
TO STRIKE AND RE-FILE EXHIBITS
IN SUPPORT OF PLAINTIFFS'
MEMORANDUM RE RELEVANCY
AND DISCOVERABILITY OF FDA
INSPECTION AND WARNING
LETTER AND RECOVERY CONE
REMOVAL SYSTEM**

Plaintiffs, through counsel undersigned, respectfully request that the Court strike the unsealed exhibits (Doc. Nos. 697-1 and 697-2) filed in support of Plaintiffs' Memorandum Re Relevancy and Discoverability of FDA Inspection and Warning Letter and Recovery Cone Removal System (Doc. No. 697) on February 10, 2016. Plaintiffs further request leave to re-file the same documents with the corrections noted below. Plaintiffs' counsel has consulted with counsel for Bard, and Bard does not oppose this Motion.

I. Background

On February 10, 2016, pursuant to Case Management Order No. 8 (Doc. No. 519), Plaintiffs' filed a Memorandum Re Relevancy and Discoverability of FDA Inspection and Warning Letter and Recovery Cone Removal System (Doc. No. 697). After the filing, Bard alerted Plaintiffs that three documents attached to the public (unsealed) version of the

exhibits were, in fact, confidential documents produced pursuant to the Protective Order. These are exhibits 6, 10, and 18.

Counsel for Plaintiffs mistakenly believed that the three documents were not confidential. Two exhibits (Exs. 6 and 18) bear a *Phillips* trial exhibit mark, and the exhibits from that case are now all public, non-confidential documents. It appears that these documents were not admitted into evidence during the *Phillips* trial. The third document (Exhibit 10) is deposition testimony which Bard subsequently designated as confidential. Plaintiffs seek to have these documents stricken from the record to protect their confidentiality as claimed by Bard. Plaintiffs intend to replace current Exhibit 18 with another document that was, in fact, admitted during the *Phillips* trial and is not subject to the protective order. Plaintiffs intend to re-file the remaining two exhibits under seal, subject to this Court granting them leave to do so.¹

II. Request to Strike Publicly Filed Exhibits and to Allow Re-Filing Under Seal

Accordingly, Plaintiffs respectfully request that the Court order Plaintiffs' original Exhibit set (Doc. Nos. 697-1 and 697-2) stricken and authorize Plaintiffs to re-file their public exhibits replacing Exhibit 18 with a new document and excluding Exhibits 6 and 10 from the public exhibits. Plaintiffs further request the Court enter a revised Order directing the Clerk to seal Exhibits 6 and 10. A proposed form of order is attached.

Counsel undersigned apologizes to the Court, its staff and the parties for any inconvenience.

DATED this 24th day of February, 2016.

GALLAGHER & KENNEDY, P.A.

By: /s/ Robert W. Boatman

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¹ Because of the confusion caused by the "confidentiality" designations on numerous documents that are public by virtue of the *Phillips* trial, Plaintiffs intend to provide copies of proposed exhibits to Bard in advance of future filings so that Bard may indicate whether it believes the documents are confidential prior to Plaintiffs' filing. This should avoid recurrence of this problem in the future.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Nancy Jo Koenes

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